

DOCUMENT RESUME

03340 - [A2433574]

Protest against the Performance and Modification of a Contract.
B-188915. August 30, 1977. 2 pp.

Decision re: Maritime Supply Corp. by Milton Socolar (for Paul
G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Supply
Center, Charleston, SC; Universal Decking Systems, Inc.

Authority: 10 U.S.C. 2304(a) (2). A.S.P.K. 3-202. B-187900
(1976). B-188174 (1977). B-188591 (1977). 4 C.F.R. 20.

The protester objected to the performance and modification of a contract for deck covering. Whether an offeror intended to perform in accordance with its proposal relates to the offeror's responsibility, and GAO no longer reviews bid protests involving agencies' affirmative determinations of responsibility except in special circumstances which did not apply in this case. The question of whether to extend the contract delivery date or terminate the contract for default was a matter of contract administration, which also was not subject to GAO resolution. (Author/SC)

3574
03340

DECISION



R. Klemm
Proc. I.

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188915

DATE: August 30, 1977

MATTER OF: Maritime Supply Corporation

DIGEST:

1. Whether offeror intends to perform in accordance with proposal relates to offeror's responsibility. GAO no longer reviews bid protests involving agencies' affirmative determinations of responsibility, except for actions by procurement officials which are tantamount to fraud or where the solicitations contain definitive responsibility criteria which allegedly have not been applied.
2. Question whether to extend contract delivery date or terminate contract for default is matter of contract administration. Matters of contract administration are not for resolution under Bid Protest Procedures which are reserved for considering whether an award or proposed award of contract complies with statutory, regulatory and other legal requirements.

By telegram dated April 22, 1977, and subsequent correspondence, Maritime Supply Corporation (Maritime) protested the performance and modification of contract N00612-77-C-T143 awarded to Universal Decking Systems, Inc. (Universal), by the Naval Supply Center, Charleston, South Carolina.

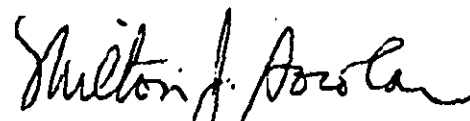
The contract for deck covering, negotiated pursuant to 10 U.S.C. § 2304(a)(2) (1970) and Armed Services Procurement Regulation § 3-202 (1976 ed.) on the basis of an urgent requirement, provided for an April 18, 1977, delivery. Universal did not meet the contract delivery date. The contract was modified to extend the delivery date to April 26, 1977, in return for a \$260.24 reduction in the contract price. The delivery actually was accomplished on April 28, 1977.

Maritime, the other offeror to provide the deck covering, protests the modification of the contract on the basis that Universal never intended to deliver on time, that the contract should have been terminated for failure to make timely delivery, that the best interests of the Government were not served by the contract modification and that changing the terms of the contract was unfair to Maritime in that it was prepared to perform timely.

B-188915

When an offeror submits a proposal without exception to the solicitation, it assumes upon award the obligation to perform in accordance with the solicitation. Hillview Farms Fertilizers, Inc., B-187900, December 28, 1976, 76-2 CPD 540. Whether the offeror intends to perform in accordance with its proposal relates to the offeror's responsibility. This Office no longer reviews bid protests involving agencies' affirmative determinations of responsibility, except for action by procurement officials which are tantamount to fraud or where the solicitations contain definitive responsibility criteria which allegedly have not been applied. Hillview Farms Fertilizers, Inc., supra. Neither exception is applicable here. Moreover, the question whether to extend the contract delivery date or to terminate the contract for default is a matter of contract administration which is the function and responsibility of the procuring activity. SMI (Watertown), Inc., B-188174, February 8, 1977, 77-1 CPD 98; Bromfield Corporation, B-188591, April 6, 1977, 77-1 CPD 240. Matters of contract administration are not for resolution under the Bid Protest Procedures, 4 C.F.R. part 20 (1977), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. SMI (Watertown), Inc., supra; Hillview Farms Fertilizers, Inc., supra.

Based on the foregoing, the protest will not be considered on the merits.

for 
Paul C. Dembling
General Counsel